IN THE SUPREME COURT OF SEYCHELLES

DR. ERNA ATHANASIUS **PLAINTIFF**

VERSUS

1. **HUNT DELTEL COMPANY (PTY) LTD**
   (Herein Rep by its Managing Director
   Captain Edmond Hoareau
2. **GAETAN PIERRE** **DEFENDANT**

Civil Side No 293 of 2002

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Mr. F. Bonte for the plaintiff
Mr. B. Georges for the defendant

JUDGMENT

B.Renaud

At the material time the Plaintiff was the owner and driver of motor vehicle S.4537 and the 1st Defendant was the owner of motor vehicle S.12486 and the 2nd Defendant was the employee of the 1st Defendant and driver of the said vehicle. On 12th July, 2002 at around 12.10 p.m. at the Victoria Hospital, the two motor vehicles collided.

The Plaintiff claims that it was the vehicle of the 1st Defendant driven at the time by the 2nd Defendant that collided with her vehicle, whereas the 2nd Defendant maintains that it was the Plaintiff whilst driving her vehicle that collided with the vehicle that he was driving.

The Plaintiff avers that the collision occurred through the negligence of the 2nd defendant and the 1st Defendant is vicariously liable. The Defendants severally deny these averments and state that the said collision was solely caused by the fault of the Plaintiff.

As a result of the collision the Plaintiff claimed to have suffered loss and damages, as stated hereunder, amounting to SR.166,266.82, for which the Defendants are jointly liable with interests and costs.

(a)	*Cost of repairs and materials*	*7,400.00*
(b)	*Spare parts required*	*8,766.82*
(c)	*Depreciation consequent to accident*	*100,000.00*
(d)	*Assessment fees*	*100.00*
(e)	*Moral damages*	*50,000.00*
		166,266.82

The Defendants severally denied the above-mentioned claims, and averred that as a result of the fault of the Plaintiff that the vehicle of the 1st Defendant was damaged and the latter suffered loss which the Plaintiff is liable to the first Defendant in the sum of SR.9,525.00 made up as follows:

(a)	*Repairs to vehicle*	*6,525.00*
(b)	*Loss of use*	*3,000.00*
		9,525.00

The Plaintiff who lives at Ma Constance, Mahe, testified that she is a Paediatrician working at the Ministry of Health and was the owner of motor vehicle S.4537 at the material time. On 12th July, 2002 at around 12.10 p.m. when leaving the hospital for her lunch break and driving down pass the little shop opposite the "*X-ay Unit*" by the "*red roof building*" car park, where the road is narrower and where there is a left curve, going towards the more wider road nearer to a roundabout, she saw the top of a white van which she thought was an ambulance coming up very fast. She was driving on her side of the road very close to the parked cars. She swerved her car aside towards the parked cars to give the "*ambulance*" way to go up the road. Just as she

did that she heard a big noise right inside her car. She got out of her car to see what had happened and found that the front fender, the driver's front door, the right wing mirror, through to the right back door and up to the back fender, all on the right side of her car, were completely damaged. The main damage was to the two doors on the right hand side. She produced a sketch plan drawn up by the Police and was admitted as Exhibit P.1, without objection by the Defence Counsel. She also produced 13 photographs taken of her car that were admitted without objection and marked as Exhibits P2 (a) to (f). She had her car assessed and valued by an Assessor on 23rd September, 2002 before it was repaired and fitted with two new doors, to establish the depreciation in value following the accident. The Valuation Certificate of the Assessor was produced as Items and marked as Items (A) and (B). She had not attempted to have the car valued after all the repairs were completed. One month after the collision she had to continue using her damaged car for two years. The driver's door was jammed and not opening and no repair could be done on it. She felt embarrassed when she left her place of work and was unable to use her car properly. She had to enter the car through the front passenger's door and climbed over the gear stick in doing so tearing her clothes on many occasions. She eventually had to stop using dresses. It was further embarrassing to drive through town in that car every day for two years until she managed to get the necessary spare parts to carry out the repairs. She had to wait for two new doors from France and it took that long because of the current foreign exchange difficulty. She was always under stress during that period whenever she drove to the hospital through the town. She had never experienced an accident during the 20 years she had been driving including 5 years in the United States of America. She has lost her no bonus claim from her Insurance. She is claiming SR.50,000.00 as moral damage.

The Plaintiff further testified that she was insured by SACOS and the latter had since paid her for the costs of the spare parts and SR.5000.00 for

loss of use for a period of 1 month. She is now not claiming for the cost of repairs and materials amounting to SR.7,400.00 and neither for spare parts required amounting to SR.8,766.82. However, SACOS did not pay her for depreciation of SR.100,000.00 which she is now claiming and the assessment fee of SR.100.00. Her revised total claims now amounts to SR150,100.00 which includes SR.50,000.00 as moral damage.

The Plaintiff denies owing the 1st Defendant SR.6,000.00 for the repair of her vehicle nor SR3,000.00 for her loss of use.

At the close of his case, Mr. F. Bonte, Learned Counsel for the Plaintiff submitted that, by virtue of Mr. B. Georges having cross-examined the Plaintiff on the Valuation Certificate which was admitted as items (A) and (B), these items are now evidence before the Court and there is no further need to have it formally produced by the Assessor.

The 2nd Defendant testified that he lives at Roche Caiman and was working as a Driver/Spanish Representative with the 1st Defendant at the material time. On the material day and time he was driving up to the Victoria Hospital to collect some workers. Arriving at the top of the hospital driveway by the roundabout and near where the staff car park is, he saw the Plaintiff driving down in her car. He stopped his vehicle by the side of the road to allow her to go down. The Plaintiff eventually arrived very close to his van that was near the roundabout, and the Plaintiff continued to move a little further down whilst he was going up. The Plaintiff started hitting the right wing mirror of her car with his van. The Plaintiff continued and hit the bumper until her car stopped. He was not driving fast, because in that area, one cannot drive very fast when coming up. He used his brake, slowed down, swerved and was keeping a proper look out at the time. It was the Plaintiff who caused the accident as a result of which she damaged her vehicle. As a result of the accident his vehicle suffered damage to its bumper, light and a

little bit to the door. The 1st Defendant caused the damages to be repaired at the cost of SR.6525.00, for which a receipt was produced and marked as Exhibit D1. The vehicle of the 1st Defendant was kept in the garage for more than one day for the repairs to be carried out. The 2nd Defendant admitted that he never made any written demand of the amount from the Plaintiff. He has since left the employment of the 1st Defendant.

The first issue to be determined by this Court is, on the balance of probabilities, which of the two parties was at fault thus responsible for the causing loss and damages to the other party. Secondly, the issue of admissibility of the Valuation Certificate as evidence Thirdly, what quantum of damages, if any, is attributable to which of the parties.

Exhibit P1, the sketch plan of the accident drawn up by the Police, shows that the width of the road at the point of impact is 4.5 metres. On a road measuring 4.5 metres wide, the width of each lane ought to be at least 2.2 metres. The distance from the front right side of the Defendant's vehicle, to the curb on the edge of the road on his right side, is shown as 1.30 metres. This indicates that the 2nd Defendant was driving his vehicle more on the right side of the road. If the 2nd Defendant had maintained his vehicle on his side of the road, he should have allowed at least 2.2 metres on his right side to allow the Plaintiff to drive down, not 1.30 metres as shown on the plan. Hence, I conclude that the 2nd Defendant was indeed at fault for failing to keep to his left side of the road, thus failed to heed sufficiently to the presence of oncoming traffic including the Plaintiff and further failed to swerve to his side of the road to avoid the collision, an indication that he was not keeping proper look out for the presence of the Plaintiff on the road. I reject the defence raised by the 2nd Defendant and therefore find, on the balance of probabilities, that it is more likely than not, that the 2nd Defendant was driving negligently at the material time and was at fault. His negligence

and fault caused the accident that resulted in loss and damages to the Plaintiff.

The 2nd Defendant was at the time employed by the 1st Defendant and was operating the vehicle in the course of his employment. I find the 1st Defendant to be vicariously liable for the act of negligence of the 2nd Defendant which resulted in damages and loss to the Plaintiff.

During cross-examination, Mr. B. Georges Learned Counsel for the Defendants put the following questions to the Plaintiff in reference to the Valuation Certificate –

Q. *I see that the accident occurred in July, 2002 and your estimate of depreciation was done in September, 2002 and in fact you signed it on that day, 23rd September. So, therefore, would I be right in assuming when this depreciation certificate was given, your car had not been repaired?*

A. No.

Q. But it has not been repaired and fitted with two new doors?

A. Yes.

Q. Have you attempted to get a fresh valuation done, a fresh estimate of depreciation now that it has two new doors?

A. I did not.

Prior to or at the time of putting the questions to the Plaintiff, Learned Counsel for the Defendants did not opt to qualify his questions to the effect that subject to the Valuation Certificate being admitted in evidence as an Exhibit, those questions would arise. In any event the questions asked did not go to the extent of addressing the substantial contents of the Certificate,

more specifically, the valuation itself. I find that the Learned Counsel for the Plaintiff's assertion that the said items be deemed as evidence before the Court is not tenable. I accordingly find that the two items are not evidence on which this Court could rely upon.

The Plaintiff is maintaining her claim for loss and damages, only in respect of the following –

Depreciation	*SR.100,000.00*
Assessment fee	*100.00*
Moral damage	*0,000.00*
	150,100.00

It goes without saying that a motor vehicle will depreciate in value immediately after an accident. The vehicle will thereafter appreciate in value following proper repairs. In the present case, the vehicle was fitted with two new doors and related spare parts as well as necessary repairs carried out and paid for by the Insurance Company. However, there would remain an element of residual depreciation which I estimate at SR.15,000.00. The Plaintiff is entitled to the assessment fee of SR.100.00 as per the receipt produced. I am satisfied that the Plaintiff indeed suffered moral damage following the accident until she had a vehicle repaired. I am of the view that the amount claimed is on the high side. I believe that an amount of SR.25,000.00 is fair and reasonable.

Having find that the 1st Defendant was at fault, I reject the counter-claims of the Defendants.

In the final analysis I enter judgment in favour of the Plaintiff as against the 1st and 2nd Defendants jointly and severally in the total sum of SR.40,100.00 plus cost.

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B.RENAUD

JUDGE

Dated this 2nd day of July 2004